



State of Delaware
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RE: Request for PERB Review – City of Wilmington & IAFF 1590
BIA 19-11-1213 (Review of Remand Decision)

Dear Counsel:

The Public Employment Relations Board remands to the Binding Interest Arbitrator to determine whether the transcript of the March 9, 2021 oral argument on appeal before Vice Chancellor Paul Fiorvanti is relevant and what, if any, weight should be accorded the transcript in reconsideration of the relative merits of the parties last, best, final offers on remand. This decision results from the hearing by the entire Public Employment Relations Board on Wednesday, January 19, 2022.

On November 30, 2021, the Board scheduled its hearing on the IAFF's request for Review of the Binding Interest Arbitrator's November 17, 2021 decision on remand. The parties were afforded the opportunity to provide responsive written argument, which culminated with the final submission from the IAFF being received on January 4, 2022.

By email sent at 1:55 p.m. on Friday, January 14, 2022, the IAFF provided a copy of a transcript from a March 9, 2021 hearing before VC Fiorvanti, asserting that the transcript had been referenced in both its and the City's written argument, noting for the Board's reference:

“... the specific issues the parties were addressing in their arguments to the Board was the Court’s statement of a ‘Trojan horse’ in reference to the City’s LBFO, and the Court’s examination of a comparison between the City’s contract with its police officers and the LBFO. The Trojan horse reference can be found at p. 39 and the comparison discussion starts at p.78.

By email received at 2:55 p.m. on Friday, January 14, 2022, counsel for the City filed a letter in opposition to the IAFF’s attempt to supplement the record on review just one business day prior to the hearing.¹ The City noted the transcript was not in the record considered by the Binding Interest Arbitrator on remand and that the decision issued by the Court was the relevant and legally binding document. The City concluded it was procedurally improper for the IAFF to request its admission just prior to the hearing before the Board. The City requested neither the transcript nor the IAFF’s cover letter be provided to the Board.

The IAFF again responded by email sent at 4:30 p.m. on January 14, 2022 objecting to the City’s characterization of the submission of the transcript and arguing that in its January 4, 2022 reply brief it had placed the City on notice that it would be providing the transcript to the Board. The IAFF concluded it was within the Board’s prerogative to consider the transcript of the arguments made to the Court.

Prior to the hearing, Board members were provided with the record created and considered by the Binding Interest Arbitrator on remand, as well as the January 14, 2022 correspondence from the parties concerning the IAFF’s request to supplement the record. The Board was not provided with the transcript and the parties were notified that the Board would consider the IAFF’s request at the hearing.

The Board considered the IAFF’s request to supplement the record on review with the transcript of the parties’ March 9, 2021 oral arguments made before VC Fiorvanti as a preliminary matter at the January 19, 2022 hearing. Each party was afforded the opportunity to present argument and to answer questions from the Board.

The Board sits as an appellate body and reviews the record created and relied upon by the Executive Director, Binding Interest Arbitrator, or Hearing Officer in making the decision on which review is requested.

The scope of the Board’s review will be limited to the record created by the parties and will address whether the decision is arbitrary, capricious, contrary to law, or otherwise unsupported by the record. The Board will formally vote to either uphold or overturn the decision, or it may remand the decision for further action by the Executive Director.²

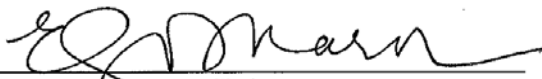
¹ Monday, January 17, 2022 was the State and Federal Martin Luther King, Jr., holiday.

² “Summary of Appeal Process before the Delaware Public Employment Relations Board”, PERB 8560

The transcript was not submitted to or reviewed by the Binding Interest Arbitrator before rendering her decision on remand; consequently it is not in the record on review before the Board. In the interest of not excluding any information which may be of consequence to the ultimate decision, the Board remands the IAFF's request to supplement the record back to the Binding Interest Arbitrator to consider.

The Board remanded the initial decision to the Binding Interest Arbitrator to reconsider based on the Court's direction, noting, "The Court remanded the parties' dispute for further proceedings with direction to reconsider the relative merits of the offers, construing the City's offer according to the specific language of that offer, rather than based upon the evidence it presented as to its intent in operationalizing that language."³ The relevance of the transcript should also be considered within the limited scope of the remand.

This decision was reached unanimously.


Elizabeth D. Maron, Chairperson


Kathi Karsnitz, Member


Gregory T. Chambers, Member

Administrative Memorandum #00-02, 1/24/00.

³ *IAFF Local 1590 v. City of Wilmington*, BIA 19-11-1213, IX PERB 8435, 8437 (PERB Decision on Remand, August 4 2021).